

No. 03-21-00053-CV

FILED IN
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JEFFREY D. KYLE
Clerk

**In the Court of Appeals for the
Third District of Texas at Austin**

Mary Louise Serafine,
Appellant

v.

Karin Crump, in her individual and official capacities as Presiding Judge of the
250th Civil District Court of Travis County, Texas; and Melissa Goodwin, in her
individual and official capacities as Justice of the Third Court of Appeals at Austin,
Texas; David Puryear and Bob Pemberton, in their individual capacities as former
justices of the Third Court of Appeals at Austin, Texas,
Appellees

**From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601**

MOTION TO SUPPLEMENT APPELLANT'S BRIEF

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellant Mary Louise Serafine respectfully asks the Court to allow
the attached "Supplement to Appellant's Brief" to be appended to or to
accompany "Appellant's Brief" of June 21, 2021. Appellant's Brief
contains 13,378 words. The Supplement contains 1,144 words. This totals

14,522 words, still within the 15,000-word limit.

Immediately following the Supplement, a corrected Table of Contents is included for the Court's convenience.

When Appellant's Brief was filed after 11 p.m. on the due date, it was accompanied by a supplement to our prior motion for extension. We stated therein that we were filing at that time to respect the Court's deadline; however we wished to "amend" the brief because it was incomplete. At that time we had not heard whether our motion for extension was granted. The request for extension was for good cause, as the motion explained. But two days after the deadline, we learned the motion was denied as moot. We wish to emphasize that the Supplement is necessary to our appellate argument.

All appellees missed their July 12 deadline this past Monday to file their Appellees' Briefs. Accelerated appeals such as this run on a 20-day schedule instead of 30 days. Appellees' July 12 deadline has been posted on the Case Detail webpage for this case.

We hope the Court will forgive Appellees' oversight, and we already agreed to a 30-day extension for Judge Crump, which was granted yesterday. In view of somewhat-less-than-strict deadlines for Appellees,

however, we think it is appropriate for us to ask the Court to allow us to file the last part of the brief, still not exceeding the word limit.

Nature of the Supplement

The supplement addresses a single, highly important point at issue in the trial court and relevant only to Appellee Judge Crump (who already has a 30-day extension). The relevant documents are already in the record and appendix, including the trial judge's order.

If the Supplement were not permitted, a major point in the case would be lost, and the Court would not fully be addressing the merits.

Legal Authority

The Court has expressed a strong preference for resolving matters on the merits instead of by technicalities. “[T]he Texas Supreme Court instructs us to be hesitant to find waiver and, when possible, construe briefing reasonably, yet liberally, so that the right to appellate review is not lost by waiver.” *Barton Food Mart, Inc. v. Botrie*, No. 03-17-00292-CV (Tex. App.—Austin, Oct. 25, 2018) (cleaned up). *See also Dudley Construction, Ltd., v. Act Pipe and Supply, Inc.*, No. 16-0651 (Tex. Apr. 6, 2018) (“[w]henever possible, we reject form-over-substance requirements that favor procedural machinations....”; *Austin v. Kroger Texas, L.P.*, 864

F.3d 326, 337 (5th Cir. 2017) (“the district court should construe the procedural rules with a preference toward resolving the case on the merits....”).

As a final point, we must object to the opening paragraph of Judge Crump’s July 14, 2021 motion for extension. It is bad-mouthing the opponent and below the dignity of the Court; some of it is highly inaccurate; all of it is irrelevant to the extension or any other issue—particularly since we had already agreed to it.

For all of the above reasons, we ask the Court to file the attached Supplement to Appellant’s Brief and ensure it reaches the panel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

My signature below certifies that on the 16th day of July, 2021, I served the foregoing document on the parties listed below through the Court’s electronic filing system.

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/s/ Mary Lou Serafine
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CERTIFICATE OF CONFERENCE

On July 16, 2021, before noon, we communicated by email with all defense counsel and explained substantially the same reasons for this motion as stated above. Defendants Puryear, Pemberton, and Goodwin are opposed, although the Supplement does not affect them. The Supplement affects only Defendant Crump, who already has a 30-day extension. At the time of filing, however, we have not heard back as to their position.

/s/ Mary Lou Serafine
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**In the Court of Appeals for the
Third District of Texas at Austin**

Mary Louise Serafine, *Appellant*

v.

Karin Crump, in her individual capacity, and Lora J. Livingston, in her official capacity, as Presiding Judges of the 200th Civil District Court of Travis County, Texas; Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas; David Puryear and Bob Pemberton, in their personal and individual capacities, including as former justices of the Third Court of Appeals at Austin, Texas; and Thomas Baker and Gisela Triana, in their official capacities as Justices of the Third Court of Appeals at Austin,¹

Appellees

**From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601**

SUPPLEMENT TO APPELLANT'S BRIEF

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¹ This caption includes Justices Baker and Triana, accurately reflecting the operation of automatic successor substitution rules operating in the case since 2019—Fed. R. Civ. P. 25(d) and Fed. R. App. P. 43(a), and operation in this appeal of Tex. R. App. P. 7.2. *See* Tabs 4, 5, 6.

This is a Supplement to Appellant’s Brief, which was filed on June 21, 2021.

The following Section D is the final section of argument, appearing just before the “Conclusion & Prayer” on page 62 of Appellant’s Brief. Following the supplemental material is a corrected Table of Contents for the Court’s convenience.

* * *

VII. Other harmful error. At page 62:

**D. The trial court erred in considering Defendant Crump’s
patently fabricated exhibits.**

Prong One of the vexatious litigant statute required defendants to show that Serafine could not prevail in her Section 1983 action against defendant-jurists. In an attempt to make that showing, Defendant Judge Crump claimed that she had recused “from all pending cases...in which Plaintiff is a party” and, therefore, “Plaintiff’s claims are moot....” SR:228 et seq. (Crump Motion). This does not comport with substantive mootness doctrine, but the more important point is that Defendant Crump’s claimed evidence for recusal (and thus mootness) was based on documents that never existed and were entirely fabricated by her and her attorneys. The fabrication is plain on the face of the record in two ways. First, anyone familiar with court records would know that merely producing a snippet of

docket entries that describe documents, instead of producing *the documents themselves* is trying to hide the actual documents. Second, when the court records for each case are actually examined (here, by Appellant) it is plain that a fabricated document with the wrong caption, case number, and parties was entered, merely to generate the false docket entry. In this way Judge Crump and her attorneys fabricated six separate documents claiming to evidence Crump’s “recusal” that never occurred; they collected the six self-made documents into Exhibit 3, SR:281-283, and Exhibit 5, SR:290-296.

This is important for two reasons. First, Judge Crump’s motion to declare Serafine a “vexatious litigant” was taken in bad faith. Few things indicate groundless, bad faith litigation conduct than fabricating exhibits because the actual extant documents do not meet your purpose.

Second, after Serafine filed objections and a motion to strike the exhibits, SR:617-630—showing in detail what the actual court documents were on file—the trial judge nevertheless overruled the objections and declined to strike any exhibit. SR:1437 and Tab 10 (Order).

The trial court should have struck the exhibits on grounds they were patently fabricated, after which Serafine would have moved for “death penalty” sanctions. This Court and others have held that fabricating evidence warrants the strongest of

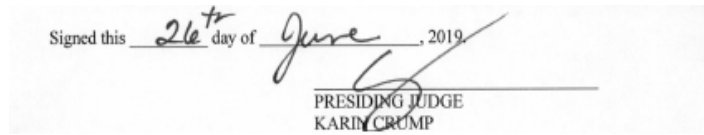
sanctions, such as “death penalty” striking of pleadings. This is because “[c]ourts cannot effectively order someone to take back fabricating the evidence...,” and likewise, “simply excluding the fabricated evidence would be no punishment and, in fact, would fail to address the inherent problem.” *JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 453 (Tex. App.—Austin 2014). Sister courts concur. *Response Time, Inc. v. Sterling Commerce*, 95 S.W.3d 656, 658 (Tex. App.—Dallas 2002) (fabricating evidence did not warrant lesser sanction before striking of pleadings).

Instead the trial judge rewarded the fabrication and misrepresentation by allowing the exhibits to stand. He then protected them by quashing Serafine’s attempts to subpoena Judge Crump or at least the paralegal to testify about the exhibits. This extraordinary judicial malfeasance shows why Serafine needed and should have been awarded the protection afforded by Section 1983.

We turn now to Judge Crump’s Exhibit 3, SR:281-283, and Exhibit 5, SR:290-296, claimed to be “evidence” supporting mootness of Serafine’s 1983 action. This was “Prong One” of Crump’s motion to declare Serafine vexatious. ***Exhibit 3 is not an “order of recusal,” but a sham.***

The relevant case in which Judge Crump should or might have recused is *Serafine v. Blunt*. That is the on-going case in which Serafine is seeking Section

After the body of the order, here is Judge Crump's signature as "presiding judge" on the same page. See Exhibit 3, SR:281-283.



Signed this 26th day of June, 2019.
PRESIDING JUDGE
KARIN CRUMP

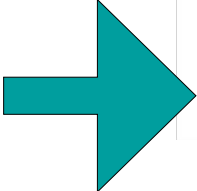
This is a sham order. Judge Crump is not the presiding judge of the case identified in the caption—that is the instant case in which she is a defendant. The “order” was created solely to give the false impression of a “recusal” that never took place.

Exhibit 5 consists of falsified docket entries.

But standing alone the “order” did not show that Judge Crump actually *filed* a recusal order in any particular case involving Serafine. Of course, Defendant Crump could not actually file a genuine order in a case involving Serafine because those few were closed, Crump was never a judge in them, and/or such an order would have to be served on parties. So, Judge Crump fabricated five more documents. These purported to be “dockets” in some cases showing fake “docket entries” that purported to show that in the file is an “ORDER FOR VOLUNTARY RECUSAL.” In reality, a clerk was apparently induced to create these fake docket entries, which were then collected into Crump’s Exhibit 5, SR:290-296. Exhibit 5's misleading title proclaims that these exhibits are “Voluntary Recusals in Case

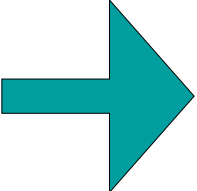
Docket Sheets.” A knowledgeable reader would immediately detect that he is being shown some docket entries—not an actual recusal order. But the trial judge wrongly accepted these and overruled Serafine’s objections.

For example, here is an old case that settled, where Serafine was fully represented by counsel. Below is the correct caption, which reads *Serafine v. State Farm*:



		9/11/2015 9:30:46 AM Velva L. Price District Clerk Travis County D-1-GN-14-004013 Tamara Franklin
CAUSE NO. D-1-GN-14-004013		
MARY LOUISE SERAFINE	§	IN THE DISTRICT COURT
VS.	§	200 TH JUDICIAL DISTRICT
STATE FARM FIRE AND CASUALTY COMPANY and STATE FARM LLOYDS	§	TRAVIS COUNTY, TEXAS

But what the file contains is only the “order” we saw at Exhibit 3, with the caption that does not match and Judge Crump “presiding”:



NO. D-1-GN-19-002601		
MARY LOUISE SERAFINE,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
V.	§	Filed in The District Court of Travis County, Texas
KARIN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250 TH CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, AND MELISSA GOODWIN, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS JUSTICE OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND DAVID PURYEAR AND BOB PEMBERTON, IN THEIR INDIVIDUAL CAPACITIES AS FORMER JUSTICES OF THE THIRD COURT OF APPEALS AT AUSTIN, TEXAS, AND IN THEIR FUTURE OFFICIAL CAPACITIES, IF ANY,	§	JUN 26 2019 At 10:00 A.M. Velva L. Price, District Clerk
<i>Defendants.</i>	§	OF TRAVIS COUNTY, TEXAS
	§	345th JUDICIAL DISTRICT
<u>ORDER OF VOLUNTARY RECUSAL</u>		

Then, from this non-matching order, the docket entry of “recusal” is generated. Exhibit 5 shows the reader only this docket entry—not the mis-filed document:

06-26-2019 ORD:OTHER ORDER

ORDER FOR VOLUNARY RECUSAL

Another example. Below is the correct caption for a TCAD case arising from Serafine's property loss at the trial Judge Crump held.

12/11/2018 7:54 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-18-006961
Hector Caucin-Tijerina

D-1-GN-18-006961

MARY LOUISE SERAFINE

v.

TRAVIS CENTRAL APPRAISAL
DISTRICT

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§ 261ST JUDICIAL DISTRICT
§

Again Judge Crump filed in this TCAD case her “order” with the non-matching caption:

NO. D-1-GN-19-002601

MARY LOUISE SERAFINE,
Plaintiff,
v.
KARIN CRUMP, IN HER INDIVIDUAL
AND OFFICIAL CAPACITIES AS
PRESIDING JUDGE OF THE 250TH
CIVIL DISTRICT COURT OF TRAVIS
COUNTY, TEXAS, AND MELISSA
GOODWIN, IN HER INDIVIDUAL AND
OFFICIAL CAPACITIES AS JUSTICE
OF THE THIRD COURT OF APPEALS
AT AUSTIN, TEXAS, AND DAVID
PURYEAR AND BOB PEMBERTON,
IN THEIR INDIVIDUAL CAPACITIES
AS FORMER JUSTICES OF THE THIRD
COURT OF APPEALS AT AUSTIN,
TEXAS, AND IN THEIR FUTURE
OFFICIAL CAPACITIES, IF ANY,
Defendants.

IN THE DISTRICT COURT
Filed In The District Court
of Travis County, Texas
JUN 26 2019
At 10:00 A.M.
Velva L. Price, District Clerk
OF TRAVIS COUNTY, TEXAS
345th JUDICIAL DISTRICT

ORDER OF VOLUNTARY RECUSAL

Then, Exhibit 5 contains only the docket entry generated, claiming a recusal, but not showing the order itself:

06-26-2019	ORD:OTHER ORDER
	ORDER OF VOLUNTARY RECUSAL

It is the same in every case. The trial judge should have sustained Serafine's objections to the fabricated exhibits and struck them. Serafine would then have moved to strike Judge Crump's vexatiousness motion as a sanction.

This Court should reverse or vacate, rendering the order that the trial court should have made.

-----end of supplement material-----

APPELLANT’S BRIEF

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Respectfully submitted,

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My signature below certifies that on the 16th day of July, 2021, I served the foregoing document on the parties listed below through the Court's electronic filing system.

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/s/ Mary Lou Serafine

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CERTIFICATE REGARDING COMPLIANCE WITH RULE 9.4(e)

The Certificate in Appellant's Brief remains correct, except that, counting the words in this Supplement (without the Table of Contents), the total number of words is 14,522.

By: *M. L. Serafine*

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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